

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AP ELECTRIC, INC.,

Plaintiff,

v.

OAKLAND AUTOMATION, LLC,
et al.,

Defendants.

Case No. 23-11342

Honorable F. Kay Behm

Magistrate Judge Elizabeth A. Stafford

**ORDER GRANTING PLAINTIFF'S MOTION FOR ALTERNATE
SERVICE (ECF NO. 53)**

Plaintiff AP Electric, Inc., (APE) moves for alternate service of a subpoena on non-party witness Robert J. Cuccaro Jr. ECF No. 53.¹ Defendants do not oppose this motion. *Id.*, PageID.682-683. APE states that a process server tried to serve Cuccaro at his residence on three occasions. *Id.*, PageID.693-695. All attempts to serve Cuccaro failed. APE's motion includes an affidavit of the process server detailing his unsuccessful attempts to serve Cuccaro. *Id.*, PageID.717.

Under Federal Rule of Civil Procedure 45(b)(1), "Serving a subpoena

¹ The Honorable F. Kay Behm referred the motion to the undersigned for hearing and determination. ECF No. 54.

requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering the fees for 1 day's attendance and the mileage allowed by law." Rule 45(b) expressly requires personal service; "the rule makes no allowance for service by alternate means." *Powell v. State Farm Fire & Cas. Co.*, No. 15-13342, 2015 WL 13619425, at *1 (E.D. Mich. Dec. 23, 2015). But the rule allows for "service of a subpoena by alternate means once the party seeking evidence demonstrates an inability to effectuate service after a diligent effort." *OceanFirst Bank v. Hartford Fire Ins. Co.*, 794 F. Supp. 2d 752, 754 (E.D. Mich. 2011).

Alternate means must be reasonably calculated to insure delivery. *Id.* (citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 318 (1950)). "Mailing by first-class mail to the actual address of the intended recipient generally will suffice, especially when the mailing is accompanied by posting at the known address of the prospective witness." *Id.* (cleaned up).

APE searched public records and determined that Cuccaro's current home address is 119 Merion Drive, Canton, Michigan 48188. ECF No. 53, PageID.694. The process server made three unsuccessful attempts to serve Cuccaro at his home and left behind a business card to which

Cuccaro has not responded. *Id.*, Page ID.693-695. This demonstrates APE's diligent efforts to personally serve Cuccaro. Mailing and posting the subpoena and related documents to Cuccaro's current residence are methods of alternate service that will result in actual delivery. Thus, APE's motion for alternate service is **GRANTED**, and service may be effected by:

- Mailing the subpoena, related notice of deposition, attendant/witness fees, and a copy of this order, via first-class mail, to Mr. Cuccaro's residence at 119 Merion Drive, Canton, MI 48188; and,
- Tacking or affixing, by a process server, the subpoena, related notice of deposition, and a copy of this this order at Mr. Cuccaro's residence at 119 Merion Drive, Canton, MI 48188.

Dated: September 18, 2024

s/Elizabeth A. Stafford
ELIZABETH A. STAFFORD
United States Magistrate Judge

NOTICE TO PARTIES ABOUT OBJECTIONS

Within 14 days of being served with this order, any party may file objections with the assigned district judge. Fed. R. Civ. P. 72(a). The district judge may sustain an objection only if the order is clearly erroneous or contrary to law. 28 U.S.C. § 636. **“When an objection is filed to a**

magistrate judge’s ruling on a non-dispositive motion, the ruling remains in full force and effect unless and until it is stayed by the magistrate judge or a district judge.” E.D. Mich. LR 72.2.

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served on counsel of record and any unrepresented parties via the Court’s ECF System to their email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on September 18, 2024.

S/Davon Allen
DAVON ALLEN
Case Manager